

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

HAWAII-PACIFIC APPAREL GROUP,
INC.,

Plaintiff/Counterclaim Defendant,

-against-

CLEVELAND BROWNS FOOTBALL
COMPANY LLC and NATIONAL
FOOTBALL LEAGUE PROPERTIES, INC.,

Defendants/Counterclaim Plaintiffs.

Case No.: 04 CV 7863 (DC)

**SUPPLEMENTAL DECLARATION OF
MARQUES TRACY***

STATE OF NEW YORK §

§

COUNTY OF NEW YORK §

I, MARQUES TRACY, declare as follows:

9. I am a legal assistant at the law firm of White & Case LLP, counsel for Defendants/Counterclaim Plaintiffs in the above-captioned action.

10. I submit this supplemental declaration in further support of Defendants' Motion For Partial Summary Judgment on Trademark Priority and in opposition to Plaintiff's Motion for Partial Summary Judgment on Priority of Use in Interstate Commerce.

11. I attach as Exhibit F a true and correct copy of documents received from Plaintiff identified by Bates Nos. 000076-000077.

* Defendants have filed this document electronically.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 6th day of July, 2005.



The image shows a handwritten signature in black ink, which appears to be "Marques Tracy". The signature is fluid and cursive, with a horizontal line drawn underneath it. Below the line, the name "Marques Tracy" is printed in a standard sans-serif font.

Exhibit F

AGREEMENT

This Agreement is entered as of this ____ day of July, 1994 by and between Viacom International Inc. ("Viacom") and Hawaii-Pacific Apparel Group, Inc. ("HPAG").

WHEREAS Viacom is the owner of a trademark registration for DEPUTY DAWG.

WHEREAS HPG is the owner of a trademark registration for TOP DAWG and Design for clothing namely T-shirts (the "Registration"), and has filed applications to register TOP DAWG and TOP DAWG HAWAII for clothing namely footwear, head wear, shirts, pants, shorts, jackets and swim wear (the "Applications").

WHEREAS HPG is expanding into novelty items, i.e., bags, posters, mugs, book covers, using its marks TOP DAWG and TOP DAWG HAWAII.

WHEREAS the parties wish to resolve any conflict without resort to litigation.

NOW THEREFORE, for good and valuable consideration, the parties agree as follows:

1. Viacom agrees not to oppose the Applications for use of the TOP DAWG and TOP DAWG HAWAII marks or move to cancel the Registration, so long as the terms and conditions of the Agreement are met.

2. HPG agrees to refrain from using TOP DAWG and TOP DAWG HAWAII on any goods with the exception of clothing, namely footwear, head wear, shirts, pants, shorts, jackets and swim wear and novelty items as set forth above.

3. HPG agrees to refrain from using any reference to the DEPUTY DAWG television series, or characters or elements therein, in sales, merchandising advertising or promotional literature.

4. Viacom agrees to refrain from using any reference to the TOP DAWG or TOP DAWG HAWAII marks distributed pursuant to the Applications and Registration.

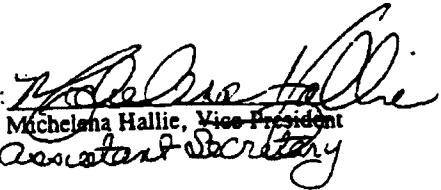
5. HPG agrees not to oppose the use or registration of any and all of the Viacom DEPUTY DAWG Marks and agrees to give Consent to the registration of such Marks when requested by Viacom.

6. This Agreement is binding upon Viacom and HPG, their successors or assigns and any user or licensee which may be appointed by either of them.

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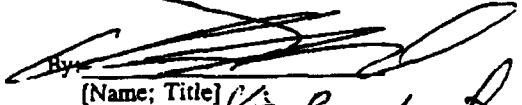
IN WITNESS WHEREOF the Parties have executed this Agreement on the date and year first written above.

VIACOM INTERNATIONAL INC

By: 
Michelena Hallie, Vice President
Assistant Secretary

viacoex.doc

HAWAII-PACIFIC APPAREL
GROUP, INC.

By: 
[Name; Title] Vice President

DARREN SHEPHERD

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